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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,942	10/02/2001	Royce W. Johnson	VAC.483	8824
30159	7590	07/26/2004	EXAMINER	
ATTN: LEGAL-MANUFACTURING KINETIC CONCEPTS, INC. P.O. BOX 659508 SAN ANTONIO, TX 78265-9508			TRUONG, LINH T	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

YW

<b>Office Action Summary</b>	Application No. 09/937,942	Applicant(s) JOHNSON, ROYCE W.	
	Examiner Linh Truong	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 April 2004 has been entered.

### ***Claim Rejections -35 USC ~ 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being anticipated by Argenta et al. 'WO 94/20041.

For claims 1 and 7 Argenta et al. teach a method for wound treatment comprising reepithelializing a wound surface (p.7, lines 19-24) with a negative pressure system comprising of: a porous pad 610, a tube 611 with first end in

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fluid communication with the pad and a second end connected to a vacuum 25, and a wound drape (612) (figure 1). Argenta et al., however, do not teach a porous pad predisposed with a wound healing factor. Pre-medicated dressings are well known in the art; it is obvious to one of ordinary skill in the art to have wound healing factors incorporated within the dressings because they come in direct contact with the wound, and therefore, would promote faster healing of wounds. For example, Collyer et al. teaches a porous pad that can be impregnated with antiseptic and/or other medicament (cot. 3, lines 53-56). Therefore it would be obvious to one with ordinary skill in the art to substitute the porous pad of Argenta for the porous pad of Collyer et al. for more efficient wound healing.

Claims 2-5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argenta et al. 'WO 94/20041 in view of Collyer et al. '5,973,221 and in further view of Gibbins '6,355,858.

For claims 2-5 and 11, both Argenta et al. and Collyer et al. do not teach that the wound healing factor comprises of basic fibroblast growth factor and an anti-microbial that is an antibiotic. Since it is well known in the art that wounds, especially burns, are a destruction of skin tissue, wound healing would occur much faster when skin tissue regrows. Basic fibroblast growth factor promotes the growth of the endothelial cells of the skin; thus, it would be effective at increasing growth rate of new skin. It is also well known in the art that anti-

microbial such as an antibiotic inhibit infections of wounds. Gibbons teach incorporating basic fibroblast growth factor and an anti-microbial such as streptomycin (cot. 6, line 49- col.7, line 14) as one of many active ingredients that can be incorporated or grafted onto a dressing. And since Collyer et al. teach a pad that can be incorporated with medicament, it would be obvious to one with ordinary skill in the art to provide the combined inventions of Argenta et al. and Collyer et al. with a porous pad that is predisposed with basic fibroblast growth factor and streptomycin to inhibit the growth of harmful microbials and promote faster wound healing.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argenta et al. 'WO 94/20041 in view of Collyer et al. '5,973,221 and in further view of Fleischmann '6,398,767

For claims 8-10, Both Argenta et al. And Collyer et al. do not teach injecting wound healing factors into the porous pad through the wound drape. Fleischmann teaches the delivery of wound healing factors such as antiseptics and antibiotics (col. 2, line 66- col.3, line 1) onto the pad through a delivery tube 16 instead of via injection through the wound drape onto the porous pad. Fleischmann's method can be used to deliver different wound healing factors or more of the same wound healing factors in addition to the wound healing factor that is predisposed on Collyer et al.'s porous pad. At the time the invention was made, it would have been an obvious matter of design choice to a person of

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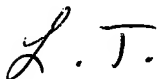
ordinary skill in the art to inject the wound healing factor onto the porous pad because Applicant has not disclosed that this procedure provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the wound healing factors delivered fluidically through a tube onto a porous pad because the porous pad will still soak up the additional wound healing factors so that the healthcare personnel/ patient would not have to change the porous pads when the predisposed wound healing agents in the pad are used up.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh Truong whose telephone number is 703-605-4974. The examiner can normally be reached on Mondays-Fridays for 8:30am-5:30pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Linh Truong



JOHN D. CALVERT  
SUPERVISORY PATENT EXAMINER  
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